

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

NINA L. TARANDA,	)	
	)	No. CV-09-181-JPH
Plaintiff,	)	
	)	ORDER GRANTING DEFENDANT'S
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	
MICHAEL J. ASTRUE, Commissioner	)	
of Social Security,	)	
	)	
Defendant.	)	
	)	
	)	

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BEFORE THE COURT are cross-motions for summary judgment noted for hearing without oral argument on July 2, 2010 (Ct. Rec. 17, 19). Attorney Maureen J. Rosette represents plaintiff; Special Assistant United States Attorney L. Jamala Edwards represents the Commissioner of Social Security ("Commissioner"). The parties consented to proceed before a magistrate judge (Ct. Rec. 8). On May 17, 2010, plaintiff filed a reply (Ct. Rec. 21). After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** defendant's Motion for Summary Judgment (Ct. Rec. 19) and **DENIES** plaintiff's Motion for Summary Judgment (Ct. Rec. 17).

**JURISDICTION**

Plaintiff protectively applied for supplemental security income (SSI) on July 28, 2004, and for disability insurance benefits (DIB) on September 21, 2004, alleging onset as of January

1 1, 2004, due to depression, mental and emotional illness, and  
2 post-traumatic stress disorder (PTSD) (Tr. 60-62, 64, 581-584).  
3 The applications were denied initially and on reconsideration (Tr.  
4 50-51, 55-58). Administrative Law Judge (ALJ) Richard Say held a  
5 hearing on March 8, 2007. Plaintiff, represented by counsel,  
6 psychology expert Allen Bostwick, Ph.D., and vocational expert  
7 Fred Cutler testified (Tr. 728-758). On May 5, 2007, the ALJ  
8 issued a decision (Tr. 14-26) finding plaintiff not disabled (Tr.  
9 26). The Appeals Council denied a request for review on May 27,  
10 2009 (Tr. 6-8). Therefore, the ALJ's decision became the final  
11 decision of the Commissioner, which is appealable to the district  
12 court pursuant to 42 U.S.C. § 405(g). On June 15, 2009, plaintiff  
13 filed this action for judicial review pursuant to 42 U.S.C. §  
14 405(g)(Ct. Rec. 1,4).

#### 15 **STATEMENT OF FACTS**

16 The facts have been presented in the administrative hearing  
17 transcript, the ALJ's decision, referred to as necessary in the  
18 briefs of both parties, and are summarized here where relevant.

19 Plaintiff was 44 years old at the hearing. She has a tenth or  
20 eleventh grade education, and has worked as a quality assurance  
21 worker, an order processor, and an office manager (Tr. 65,70,86,  
22 92,571-572,737,751). She lives alone, cleans, shops, and does  
23 laundry (Tr. 102-103,737-738,740,745). She takes walks, rides the  
24 bus, exercises at a gym, cooks, visits friends and family, attends  
25 church, reads up to ten hours a week, and embroiders (Tr. 102-  
26 105,160,738-740,742,744-745,747). Plaintiff is unable to work due  
27 to anxiety attacks monthly or every other month (Tr. 83,743). She  
28 attends counseling and takes two prescribed psychotropic

1 medications (Tr. 741,744-746,748). Ms. Taranda has problems with  
2 anxiety and concentration (Tr. 744-746).

3 **SEQUENTIAL EVALUATION PROCESS**

4 The Social Security Act (the "Act") defines "disability"  
5 as the "inability to engage in any substantial gainful activity by  
6 reason of any medically determinable physical or mental impairment  
7 which can be expected to result in death or which has lasted or  
8 can be expected to last for a continuous period of not less than  
9 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act  
10 also provides that a plaintiff shall be determined to be under a  
11 disability only if any impairments are of such severity that a  
12 plaintiff is not only unable to do previous work but cannot,  
13 considering plaintiff's age, education and work experiences,  
14 engage in any other substantial gainful work which exists in the  
15 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). Thus,  
16 the definition of disability consists of both medical and  
17 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156  
18 (9<sup>th</sup> Cir. 2001).

19 The Commissioner has established a five-step sequential  
20 evaluation process for determining whether a person is disabled.  
21 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person  
22 is engaged in substantial gainful activities. If so, benefits are  
23 denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(I). If not,  
24 the decision maker proceeds to step two, which determines whether  
25 plaintiff has a medically severe impairment or combination of  
26 impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

27 If plaintiff does not have a severe impairment or combination  
28 of impairments, the disability claim is denied. If the impairment

1 is severe, the evaluation proceeds to the third step, which  
2 compares plaintiff's impairment with a number of listed  
3 impairments acknowledged by the Commissioner to be so severe as to  
4 preclude substantial gainful activity. 20 C.F.R. §§  
5 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P  
6 App. 1. If the impairment meets or equals one of the listed  
7 impairments, plaintiff is conclusively presumed to be disabled. If  
8 the impairment is not one conclusively presumed to be disabling,  
9 the evaluation proceeds to the fourth step, which determines  
10 whether the impairment prevents plaintiff from performing work  
11 which was performed in the past. If a plaintiff is able to perform  
12 previous work, that Plaintiff is deemed not disabled. 20 C.F.R. §§  
13 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, plaintiff's  
14 residual functional capacity (RFC) assessment is considered. If  
15 plaintiff cannot perform this work, the fifth and final step in  
16 the process determines whether plaintiff is able to perform other  
17 work in the national economy in view of plaintiff's residual  
18 functional capacity, age, education and past work experience. 20  
19 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v. Yuckert*,  
20 482 U.S. 137 (1987).

21 The initial burden of proof rests upon plaintiff to establish  
22 a *prima facie* case of entitlement to disability benefits.  
23 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir. 1971); *Meanel v.*  
24 *Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden is  
25 met once plaintiff establishes that a physical or mental  
26 impairment prevents the performance of previous work. The burden  
27 then shifts, at step five, to the Commissioner to show that (1)  
28 plaintiff can perform other substantial gainful activity and (2) a

1 "significant number of jobs exist in the national economy" which  
2 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup>  
3 Cir. 1984).

4 Plaintiff has the burden of showing that drug and alcohol  
5 addiction (DAA) is not a contributing factor material to  
6 disability. *Ball v. Massanari*, 254 F.3d 817, 823 (9<sup>th</sup> Cir. 2001).  
7 The Social Security Act bars payment of benefits when drug  
8 addiction and/or alcoholism is a contributing factor material to a  
9 disability claim. 42 U.S.C. §§ 423 (d)(2)© and 1382(a)(3)(J);  
10 *Bustamante v. Massanari*, 262 F.3d 949 (9<sup>th</sup> Cir. 2001); *Sousa v.*  
11 *Callahan*, 143 F.3d 1240,1245 (9<sup>th</sup> Cir. 1998). If there is evidence  
12 of DAA and the individual succeeds in proving disability, the  
13 Commissioner must determine whether DAA is material to the  
14 determination of disability. 20 C.F.R. §§ 404.1535 and 416.935. If  
15 an ALJ finds that the claimant is not disabled, then the claimant  
16 is not entitled to benefits and there is no need to proceed with  
17 the analysis to determine whether substance abuse is a  
18 contributing factor material to disability. However, if the ALJ  
19 finds that the claimant is disabled, then the ALJ must proceed to  
20 determine if the claimant would be disabled if he or she stopped  
21 using alcohol or drugs.

#### 22 STANDARD OF REVIEW

23 Congress has provided a limited scope of judicial review of a  
24 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold  
25 the Commissioner's decision, made through an ALJ, when the  
26 determination is not based on legal error and is supported by  
27 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup>  
28 Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999).

1 "The [Commissioner's] determination that a plaintiff is not  
2 disabled will be upheld if the findings of fact are supported by  
3 substantial evidence." *Delgado v. Heckler*, 722 F.2d 570,572 (9<sup>th</sup>  
4 Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is  
5 more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112,  
6 1119 n.10 (9<sup>th</sup> Cir. 1975), but less than a preponderance.  
7 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9<sup>th</sup> Cir. 1989);  
8 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d  
9 573, 576 (9<sup>th</sup> Cir. 1988). Substantial evidence "means such  
10 evidence as a reasonable mind might accept as adequate to support  
11 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)  
12 (citations omitted). "[S]uch inferences and conclusions as the  
13 [Commissioner] may reasonably draw from the evidence" will also be  
14 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On  
15 review, the Court considers the record as a whole, not just the  
16 evidence supporting the decision of the Commissioner. *Weetman v.*  
17 *Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir. 1989)(quoting *Kornock v.*  
18 *Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

19 It is the role of the trier of fact, not this Court, to  
20 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If  
21 evidence supports more than one rational interpretation, the Court  
22 may not substitute its judgment for that of the Commissioner.  
23 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579  
24 (9<sup>th</sup> Cir. 1984). Nevertheless, a decision supported by substantial  
25 evidence will still be set aside if the proper legal standards  
26 were not applied in weighing the evidence and making the decision.  
27 *Browner v. Secretary of Health and Human Services*, 839 F.2d 432,  
28 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to

1 support the administrative findings, or if there is conflicting  
2 evidence that will support a finding of either disability or  
3 nondisability, the finding of the Commissioner is conclusive.  
4 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9<sup>th</sup> Cir. 1987).

#### 5 **ALJ'S FINDINGS**

6 At step one the ALJ found plaintiff has not engaged in  
7 substantial gainful activity since onset on January 1, 2004 (Tr.  
8 16). At steps two and three, he found plaintiff suffers from mood  
9 disorder, generalized anxiety disorder, PTSD, and borderline  
10 personality disorder, impairments that are severe but do not alone  
11 or in combination meet or equal the severity of the Listings (Tr.  
12 16, 23). The ALJ assessed an RFC with purely psychological  
13 limitations (Tr. 23;753). At step four, relying on the VE's  
14 testimony, the ALJ found plaintiff can perform her past work as a  
15 quality assurance worker/inspector, and as an order processor (Tr.  
16 25). The step 4 determination made step 5 unnecessary. ALJ Say  
17 found plaintiff not disabled (Tr. 25), making further DAA analysis  
18 unnecessary.

#### 19 **ISSUES**

20 Plaintiff challenges the ALJ's analysis of psychological  
21 limitations and failure to fully develop the record with respect  
22 to Ms. Everhart's post-hearing evaluation (Ct. Rec. 18 at 11-17;  
23 17-18). The Commissioner asserts the ALJ properly weighed the  
24 evidence, assessed credibility, and developed the record.  
25 Asserting the decision is free of legal error and supported by  
26 substantial evidence, the Commissioner asks the court to affirm  
27 (Ct. Rec. 20 at 13).

28 ///

## DISCUSSION

### A. Weighing evidence - standards

In social security proceedings, the claimant must prove the existence of a physical or mental impairment by providing medical evidence consisting of signs, symptoms, and laboratory findings; the claimant's own statement of symptoms alone will not suffice. 20 C.F.R. § 416.908. The effects of all symptoms must be evaluated on the basis of a medically determinable impairment which can be shown to be the cause of the symptoms. 20 C.F.R. § 416.929. Once medical evidence of an underlying impairment has been shown, medical findings are not required to support the alleged severity of symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9<sup>th</sup> Cr. 1991).

A treating physician's opinion is given special weight because of familiarity with the claimant and the claimant's physical condition. *Fair v. Bowen*, 885 F.2d 597, 604-605 (9<sup>th</sup> Cir. 1989). However, the treating physician's opinion is not "necessarily conclusive as to either a physical condition or the ultimate issue of disability." *Magallanes v. Bowen*, 881 F.2d 747, 751 (9<sup>th</sup> Cir. 1989)(citations omitted). More weight is given to a treating physician than an examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1995). Correspondingly, more weight is given to the opinions of treating and examining physicians than to nonexamining physicians. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9<sup>th</sup> Cir. 2004). If the treating or examining physician's opinions are not contradicted, they can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the ALJ may reject an opinion if he states specific, legitimate reasons that are supported by substantial evidence. See *Flaten v.*



1 *Secretary of Health and Human Serv.*, 44 F.3d 1435, 1463 (9<sup>th</sup> Cir.  
2 1995).

3 In addition to the testimony of a nonexamining medical  
4 advisor, the ALJ must have other evidence to support a decision to  
5 reject the opinion of a treating physician, such as laboratory  
6 test results, contrary reports from examining physicians, and  
7 testimony from the claimant that was inconsistent with the  
8 treating physician's opinion. *Magallanes v. Bowen*, 881 F.2d 747,  
9 751-52 (9<sup>th</sup> Cir. 1989); *Andrews v. Shalala*, 53 F.3d 1042-43 (9<sup>th</sup>  
10 Cir. 1995).

11 **B. Evidence of psychological limitation**

12 Plaintiff alleges the ALJ erred when he weighed the evidence  
13 of her psychological limitations.

14 The ALJ considered Dr. Bostwick's opinion that the records  
15 conflict substantially (Tr. 21, 24, referring to Tr. 730). Dr.  
16 Bostwick points out Family Services of Spokane emphasized  
17 plaintiff's

18 diagnoses of severe PTSD and a major depressive disorder  
19 ranging from moderate to severe with psychotic features.  
20 And her medications have been for symptoms related to  
those two conditions and her case management has centered  
around her needs based on those conditions.

21 However, she has had three outside examinations. In  
22 Exhibit 8F, she was seen by Dr. Everhart for her  
Social Security evaluation on 12/29/04 and Dr. Everhart  
23 diagnosed PTSD which was consistent with the record  
and mild depressive disorder, NOS. And she rated a  
24 GAF score of 60 which reflects mild, perhaps moderate  
symptoms or limitations.

25 Then she was seen for two DSHS examinations. The first  
26 was . . . July 6<sup>th</sup> 2005 and she was diagnosed only with  
a borderline personality disorder and there was a rule  
27 out PTSD and that GAF score was 55 which would reflect  
moderate symptoms.

28 And then 10 months later . . . on May 23, 2006, she was

1 again diagnosed with borderline personality disorder,  
2 but also a generalized anxiety disorder and then a  
rule out PTSD, again, with a GAF score of 55.

3 So in neither [outside examiners's] case is there a  
4 major depressive disorder and there's no diagnosed  
psychotic symptoms in any of those three [examiners'  
5 opinion] exhibits.

6 . . . both MMPI-2's for the DSHS examinations are  
patently invalid. . . . [and] clearly in the range  
7 of such marked exaggeration that it actually met  
the criteria for a malingering diagnosis . . . I'd  
8 recommend an independent assessment with an MMPI-2  
again.

9 (Tr. 730-732).

10 The ALJ observes Dr. Bostwick testified records reveal a  
11 [possibly chosen] chaotic lifestyle with substantial conflict;  
12 several substance abuse relapses over the past few years; some  
13 examiners have opined plaintiff appears manipulative; there is no  
14 consistency in any of the diagnosed major mental illnesses, but  
15 even if any of the diagnoses are accurate, all are treatable.  
16 Given the treatment plaintiff has received, Dr. Bostwick expected  
17 Ms. Taranda should have shown improvement (Tr. 21; 730-733, 735-  
18 736).

19 The ALJ relied on more than Dr. Bostwick's testimony when he  
20 assessed plaintiff's RFC. He followed Dr. Bostwick's  
21 recommendation to obtain a new evaluation. After the hearing, in a  
22 letter dated March 8, 2007, ALJ Say notified plaintiff's counsel  
23 of his request that a new evaluation be scheduled (Tr. 21, 27).

24 The exam was conducted by Dr. Everhart on March 23, 2007 (Tr.  
25 21-23; 567-570). The ALJ observes Dr. Everhart's newest report  
26 points out plaintiff's numerous inconsistent statements, including  
27 contradictory accounts of substance abuse. Dr. Everhart reports  
28 plaintiff's post hearing MMP-2, like the others, is invalid (Tr.

21-22, referring to Tr. 570-571,573,576). She (Dr. Everhart) assessed moderate limitations in the ability to understand, remember, and carry out complex instructions, make judgments on complex work-related decisions, interact appropriately with supervisors and co-workers, and respond appropriately to usual work situations and changes in a routine work setting (Tr. 577-578). She assessed a marked limitation in plaintiff's ability to interact appropriately with the public (Tr. 578). Significantly, the ALJ notes Dr. Everhart opined plaintiff's self-reported history and use of drugs and alcohol "is of questionable validity." If plaintiff is totally abstinent, Dr. Everhart opined, Ms. Taranda's interactions with others and stability could improve (Tr. 23; 578). The ALJ considered Dr. Everhart's opinion but observed it is based in part on apparent ongoing DAA.

The ALJ considered the February 2006 opinion of treating professional Marian Beumier, MSW, at Family Source Spokane (Tr. 20-21, 25; 283-286). She opined it was "impossible" for plaintiff to work at the time due to the severe and chronic symptoms experienced as a result of PTSD and major depressive disorder (Tr. 284). Citing 20 C.F.R. 404.1513, the ALJ properly rejected Ms. Beumier's diagnosis because she is not an acceptable treating source (Tr. 25). He also rejected her opinion because it appears based on plaintiff's self-reports, which he found unreliable (see below)(Tr. 24-25).

To aid in weighing the conflicting medical evidence, the ALJ evaluated plaintiff's credibility and found her less than fully credible (Tr. 24-25). Credibility determinations bear on evaluations of medical evidence when an ALJ is presented with

1 conflicting medical opinions or inconsistency between a claimant's  
2 subjective complaints and diagnosed condition. See *Webb v.*  
3 *Barnhart*, 433 F.3d 683, 688 (9<sup>th</sup> Cir. 2005).

4 It is the province of the ALJ to make credibility  
5 determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir.  
6 1995). However, the ALJ's findings must be supported by specific  
7 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir.  
8 1990). Once the claimant produces medical evidence of an  
9 underlying medical impairment, the ALJ may not discredit testimony  
10 as to the severity of an impairment because it is unsupported by  
11 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9<sup>th</sup> Cir.  
12 1998). Absent affirmative evidence of malingering, the ALJ's  
13 reasons for rejecting the claimant's testimony must be "clear and  
14 convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995).  
15 "General findings are insufficient: rather the ALJ must identify  
16 what testimony not credible and what evidence undermines the  
17 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*  
18 *Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

19 The ALJ relied on the many inconsistencies in plaintiff's  
20 statements as a clear and convincing reason to discount  
21 credibility. Other reasons, among many relied on, include  
22 activities inconsistent with allegedly severe limitations and  
23 noncompliance with treatment (Tr. 24-25).

24 The ALJ notes plaintiff has inconsistently reported substance  
25 abuse, the years she divorced and last worked, childhood abuse,  
26 adult relationship abuse, and legal history (Tr. 21-22, 24-25).  
27 See e.g., Tr. 243 (plaintiff last used alcohol in May of 2004 and  
28 methamphetamine in September 04 [both after onset]; in December of

1 2004, she has not consumed alcohol in two years (Tr. 253)). And  
2 *cf.* Tr. 571 (only reported legal history is DUI in 1993 at Tr.  
3 253), with Tr. 658 (legal matters in Arizona in October 2007) and  
4 Tr. 392, 399, 571 (charged with three counts of fourth degree  
5 assault in August 2005). Plaintiff has indicated she was divorced  
6 in 1991 and 1993 (Tr. 253, 571, 749). She last worked in November  
7 of 2003 (Tr. 237, 739) and in January of 2004 (Tr. 83, 738).  
8 Plaintiff suffered abuse as a child and as an adult (Tr. 242-243,  
9 253, 565) and was never abused (Tr. 571).

10 A claimant's inconsistent statements diminish credibility. It  
11 is a factor the ALJ may properly rely on when assessing  
12 credibility. *Thomas v. Barnhart*, 278 F.3d 947, 958-959 (9<sup>th</sup> Cir.  
13 2002).

14 The ALJ notes despite reports of limited functioning, Ms.  
15 Taranda regularly attends computer classes, exercises, rides the  
16 bus, shops, and visits friends (Tr. 280, 573). He relied on  
17 plaintiff's ability to engage in regular social interactions  
18 because it is conduct inconsistent with allegations her social  
19 functioning is severely limited (*cf.* Tr. 120: plaintiff is unable  
20 to go out alone, with Tr. 103: plaintiff walks, takes public  
21 transportation, and shops twice a month for 3-4 hours). The  
22 ability to see friends, attend church and computer classes,  
23 exercise at a gym at least weekly (Tr. 24), and travel alone to  
24 California on several occasions (Tr. 331, 373) reflects conduct  
25 inconsistent with complaints of anxiety so severe plaintiff is  
26 unable to leave home alone.

27 Activities inconsistent with allegedly severe limitations  
28 cast doubt on credibility, and an ALJ may properly rely on this

1 factor. *See e.g., Matthews v. Shalala*, 10 F.3d 678, 680 (9<sup>th</sup> Cir.  
2 1993).

3 Plaintiff failed to comply with taking prescribed medications  
4 and keeping appointments, as the ALJ correctly points out (Tr. 24;  
5 269-270). Examples of unexplained noncompliance include a three  
6 month treatment gap in 2005 (Tr. 251), numerous failures to refill  
7 prescribed medications or take as prescribed, and many missed  
8 appointments (Tr. 213; 226; 235; 269; 327-328; 332; 337-339; 349;  
9 357; 363; 375; 378; 382; 384; 386; 392; 399; 623; 660; 662-664;  
10 673 and others). Noncompliance with medical treatment and the lack  
11 of consistent treatment can cast doubt on a claimant's  
12 credibility. *Burch v. Barnhart*, 400 F.3d 676 (9<sup>th</sup> Cir. 2005); *Fair*  
13 *v. Bowen*, 885 F.2d 597, 603 (9<sup>th</sup> Cir. 1989).

14 There is evidence of malingering, including three invalid  
15 MMPI-2's, one so extreme it met the criteria for a malingering  
16 diagnosis, as Dr. Bostwick opined (Tr. 280, 293, 731-732).  
17 Although not required, the ALJ's credibility determination is  
18 supported by clear and convincing reasons that are supported by  
19 substantial evidence. *See Thomas v. Barnhart*, 278 F.3d 947, 958-  
20 959 (9<sup>th</sup> Cir. 2002)(absent malingering, ALJ's reasons must be  
21 clear, convincing, and supported by substantial evidence).

22 The ALJ rejected the opinions co-signed by Dr. Rosenkrans  
23 because they were based on plaintiff's statement she had never  
24 abused substances, a statement contradicted by both her reported  
25 past heavy use of alcohol and methamphetamines, and noted relapses  
26 after onset. *See* Tr. 24; 278 (plaintiff told Rosenkrans in July of  
27 2005 she had never used; Tr. 291 (same, in 2006); Tr. 297 (in May  
28 of 2005 plaintiff admits she used methamphetamine for two days).

1 After the ALJ's unfavorable decision in May of 2007, Dr.  
2 Rosenkrans cosigned an opinion dated October 9, 2008 (Tr. 717-720)  
3 again based on "no indication of alcohol or drug abuse" (Tr. 718).

4 An ALJ may discount an examining professional's contradicted  
5 opinion by giving specific and legitimate reasons supported by  
6 substantial evidence. See *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup>  
7 Cir. 1995). An opinion of disability premised to a large extent  
8 upon the claimant's own accounts of his symptoms and limitations  
9 may also be disregarded, once those complaints have themselves  
10 been properly discounted. *Andrews v. Shalala*, 53 F.3d 1035, 1043  
11 (9<sup>th</sup> Cir. 1995)(citing *Flaten v. Secretary of Health & Human*  
12 *Services*, 44 F.3d 1453, 1463-1464 (1995).

13 ALJ Say properly discounted Dr. Rosenkrans's assessment  
14 because it was based on plaintiff's unreliable self-report of  
15 complete abstinence.

16 Plaintiff alleges the ALJ "basically" ignored the 2004  
17 opinion of examining psychologist Kathy Holmes, Ph.D., and failed  
18 to properly credit the 2004 opinions of Lori Pinter, ARNP and Dr.  
19 Everhart (Ct. Rec. 18 at 15-17). She fails to identify any error  
20 resulting from rejecting Ms. Pinter's or Dr. Holmes's opinions.  
21 As with Ms. Beumier, the ALJ was not required to credit Ms.  
22 Pinter's opinion as she was not an acceptable medical diagnostic  
23 source. The opinion by Dr. Holmes and Marilee Manion, MSP, is,  
24 like Dr. Rosenkrans's, based on the erroneous premise plaintiff  
25 has no limitations caused by past or present DAA (Tr. 199).

26 The specific error plaintiff alleges is the ALJ's failure to  
27 include the limitations assessed by Drs. Rosenkrans and Everhart  
28 in his hypothetical to the VE (Ct. Rec. 18 at 15-17). As noted,

1 the ALJ properly rejected Dr. Rosenkrans's opinion. And he  
2 properly gave greater weight to Dr. Everhart's more recent opinion  
3 than the one she gave in 2004. Plaintiff fails to establish the  
4 ALJ erred in weighing the evidence of psychological limitation.

5 The ALJ's assessed RFC limited plaintiff to carrying out  
6 short and simple instructions. The Commissioner accurately  
7 observes this is consistent with Dr. Everhart's opinion plaintiff  
8 has no limitations in the ability to understand, remember, and  
9 carry out simple instructions, and is able to make judgments on  
10 simple work-related decisions (Ct. Rec. 20 at 8-9, citing Tr. 23,  
11 577-578). The ALJ opined plaintiff would have problems maintaining  
12 attention and concentration for more than one hour at a time, is  
13 capable of superficial interaction with the general public and  
14 coworkers, and remains reasonably alert despite taking prescribed  
15 medications (Tr. 23; 753). To the extent Dr. Everhart assessed  
16 greater limitations, the ALJ properly rejected them as indicative  
17 of functioning when plaintiff's DAA is included, as noted.  
18 Similarly, the ALJ properly rejected Dr. Rosenkrans's assessed  
19 limitations because they are based on plaintiff's unreliable self-  
20 report of complete abstinence.

21 The ALJ's assessment of the evidence is free of error and  
22 supported by substantial evidence.

### 23 **C. Developing the record**

24 Ms. Taranda alleges the ALJ failed to fully develop the  
25 record with respect to Dr. Everhart's exam and report after the  
26 hearing. Plaintiff's counsel asked for a supplemental hearing to  
27 address the report, but the Appeals Council denied his request  
28 (Ct. Rec. 18 at 17-18). Plaintiff fails to cite any authority in



1 support of the argument in her opening or reply brief.

2 The Commissioner responds because the record was sufficient  
3 to determine disability and lacked ambiguity, the ALJ did not need  
4 to further develop the record (Ct. Rec. 20 at 11-12, citing 20  
5 C.F.R. §§ 404.1527(c)(3), 416.927(c)(3); *Tonapetyan v. Halter*, 242  
6 F.3d 1144, 1150 (9<sup>th</sup> Cir. 2001)).

7 The Commissioner is correct.

8 The ALJ is responsible for reviewing the evidence and  
9 resolving conflicts or ambiguities in testimony. *Magallanes v.*  
10 *Bowen*, 881 F.2d 747, 751 (9<sup>th</sup> Cir. 1989). It is the role of the  
11 trier of fact, not this court, to resolve conflicts in evidence.  
12 *Richardson*, 402 U.S. at 400. The court has a limited role in  
13 determining whether the ALJ's decision is supported by substantial  
14 evidence and may not substitute its own judgment for that of the  
15 ALJ, even if it might justifiably have reached a different result  
16 upon de novo review. 42 U.S.C. § 405(g).

17 In the Court's view the record is sufficient to determine  
18 disability and lacks ambiguity. The ALJ properly developed the  
19 record. The report by Dr. Rosenkrans after the decision does not  
20 compel a different result.

21 To the extent plaintiff challenges the RFC, the court finds  
22 it is fully supported by the evidence and free of legal error.  
23 Accordingly, the RFC and questions to the VE are sufficient. See  
24 *Osenbrock v. Apfel*, 240 F.3d 1157, 1165 (9<sup>th</sup> Cir. 2001).

#### 25 CONCLUSION

26 Having reviewed the record and the ALJ's conclusions, this  
27 court finds that the ALJ's decision is supported by substantial  
28 evidence and free of legal error.

1           **IT IS ORDERED:**

2           1. Defendant's Motion for Summary Judgment (**Ct. Rec. 19**) is  
3 **GRANTED.**

4           2. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 17**) is  
5 **DENIED.**

6           The District Court Executive is directed to file this Order,  
7 provide copies to counsel for the parties, enter judgment in favor  
8 of Defendant, and **CLOSE** this file.

9           DATED this 3rd day of August, 2010.

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11                               s/ James P. Hutton

12                               JAMES P. HUTTON  
13                               UNITED STATES MAGISTRATE JUDGE  
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